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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1948

No. 754

STATE OF TEXAS, STATE OF LOUISIANA, RAILROAD COMMISSION OF TEXAS, ET AL.,
Appellants,

vs.

THE UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF OKLAHOMA

JURISDICTIONAL STATEMENT

In compliance with Rule 12 of the Revised Rules of the Supreme Court of the United States appellants, the STATE OF TEXAS, the STATE OF LOUISIANA, the RAILROAD COMMISSION OF TEXAS, the LOUISIANA PUBLIC SERVICE COMMISSION, LIBBEY-OWENS-FORD GLASS COMPANY, OWENS-ILLINOIS GLASS COMPANY and KNOX GLASS BOTTLE COMPANY OF MISSISSIPPI, submit herewith their statement showing the basis of the jurisdiction of the Supreme Court of the United States to entertain the appeal in this cause:

(a) THE STATUTORY PROVISION BELIEVED TO SUSTAIN THE JURISDICTION

The statutory jurisdiction of the Supreme Court of the United States to review by direct appeal the judg-

ment here complained of is conferred by 28 U. S. C., Sections 1253 and 2101(b).

(b) The Statute of the State or Statute or Treaty of the United States, the Validity of Which Is Involved

This appeal does not involve the validity of a statute or treaty of the United States. It involves the validity of an order of the Interstate Commerce Commission entered on May 25, 1948, pursuant to and for the purpose of putting into effect an order of the Commission dated March 3, 1947, (268 I. C. C., 195), prescribing intrastate freight rates on dense soda ash for the States of Texas and Louisiana.

(c) The Date of the Judgment Sought To Be Reviewed and the Date Upon Which the Application for Appeal Is Presented

The judgment of the District Court sought to be reviewed was entered on the 26th day of January, 1949, the application for appeal filed on the 23 day of March, 1949, and presented to the District Court on the 23 day of March, 1949.

(d) Statement Showing that the Nature of the Case and the Rulings of the Court Were such as to Bring the Case Within the Jurisdictional Provisions Relied Upon

This is a suit by Texas and Louisiana and their respective Railroad and Public Service Commissions against the United States of America and the Interstate Commerce Commission in which complainants, invoking the jurisdiction of a statutory three-Judge District Court, sought to enjoin, set aside and annul an order of the Interstate Commerce Commission dated May 25, 1948, prescribing intrastate freight rates in Texas and Louisiana for the transportation of dense soda ash in carload lots, which order was made pursuant to and for the purpose of putting into effect an order of the Commission dated March 3, 1947, (268 I. C. C., 195). Libbey-

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Owens-Ford Glass Company, Owens-Illinois Glass Company and Knox Glass Bottle Company of Mississippi, manufacturers of glass products, with plants located at Shreveport, Louisiana, Waco, Texas, and Palestine, Texas, respectively, intervened on the side of complainants. (28 U. S. C., Sections 41(28), 43 to 48, inclusive, 49 U. S. C., Section 17(9)).

Prior to the action of the Interstate Commerce Commission which this suit seeks to enjoin State-prescribed freight rates per one hundred pounds for shipments in carload lots of dense soda ash, an ingredient used in the manufacture of glass products, were as to Texas, nineteen cents from the producing point at Corpus Christi to Waco and Palestine and as to Louisiana, seventeen cents from points of production at Lake Charles and North Baton Rouge to Shreveport.

The order of the Interstate Commerce Commission dated March 3, 1947, was entered, after hearing, on the complaint of the Corporation Commission of Oklahoma and Public Service Commission of Arkansas on behalf of manufacturers of glass products in those States. It was based upon the Commission's findings and report, concluding that the Texas and Louisiana intrastate freight rates violated 49 U. S. C., Sections 1, 3 and 13 (4), in that they gave an undue or unreasonable advantage or preference to the intrastate commerce of intervenors-appellants and were prejudicial to interstate commerce of the complaining manufacturers in Oklahoma and Arkansas. The Commission ordered that the interstate freight rates be reduced by six cents and that the intrastate freight rates in both Texas and Louisiana be increased by four cents. (268 I. C. C., 195). Petitions for rehearing and reconsideration were denied by the entire Commission by order entered September 4, 1947, and without further hearing the Interstate Commerce Commission, Division 3, entered the order of May 25, 1948. Copies of the report and order of March 3, 1947, the order of September 4, 1947 and the order of May 25, 1948, are attached as Appendices "A", "B" and "C".

Thereafter this suit was filed, heard and determined by a statutory three-Judge District court and resulted in a judgment, one Judge dissenting, dismissing complainants' suit. Copies of the opinion and judgment of the District Court are attached as Appendices "D" and "E".

The following decisions are believed to sustain the jurisdiction of the Supreme Court of the United States on a direct appeal to review the judgment here in question.

North Carolina *vs.* United States, 325 U. S. 507, 89 L. Ed. 1760;

New York *vs.* United States, 331 U. S. 284, 91 L. Ed. 1492;

Ayrshire Collieries Corporation *vs.* United States, — U. S. —, 93 L. Ed. 220.

(e) Statement of the Grounds Upon Which it Is Contended that the Questions Involved Are Substantial

The basic question presented is whether the findings of the Interstate Commerce Commission were based upon substantial, sufficient and competent evidence. Specifically, the complaint is that the order of the Interstate Commerce Commission has been entered with no substantial evidence in these respects:

(1) There is no evidence as to the reasonableness of the intrastate freight rates when tested by the usual and accepted standards.

(2) There is no evidence as to the reasonableness of either the interstate freight rates against which discrimination is claimed, or the intrastate freight rates which it is claimed discriminate.

(3) The finding of the Interstate Commerce Commission is based solely upon the disparity between the intrastate and interstate freight rates.

(4) The record before the Interstate Commerce Commission failed to show a single specific instance

where an interstate shipment was either prevented or retarded and which was attributable to either intrastate freight rate.

(5) The record before the Commission was devoid of any evidence whatever of specific loss of business by any competitor attributable to either intrastate freight rate.

(6) That, if there were any discrimination whatever, it was unsubstantial and did not justify the action of the Commission.

It is contended that the questions herein presented are substantial. As to the complaints, it is believed that the Interstate Commerce Commission is exceeding its power and authority and is proceeding to invade the rights of the respective States and their Commissions upon mere conjecture and without sufficient evidence. As to the intervenors, the question is very substantial, in that the increase ordered by the Interstate Commerce Commission will increase by many thousands of dollars each year the freight which they must pay upon an important ingredient used by them in their operations.

Respectfully submitted,

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APPENDIX "A"

INTERSTATE COMMERCE COMMISSION

No. 29354

CORPORATION COMMISSION, STATE OF OKLAHOMA, ET AL.

v.

MISSOURI PACIFIC RAILROAD COMPANY, ET AL.

Submitted December 19, 1946. *Decided March 3, 1947.*

1. Rates on dense soda ash, in carloads, from North Baton Rouge and Lake Charles, La., and Corpus Christi, Tex., to glass manufacturing points in Oklahoma and Arkansas, and to Wichita Falls, Tex., found unjust and unreasonable.

2. Rates on like traffic from the same origins to glass manufacturing points in Oklahoma and Arkansas and to Palestine and Waco, Tex., and Shreveport, La., found unjustly discriminatory against interstate traffic of the complaining manufacturers, unduly preferential of glass manufacturers at Palestine, Waco and Shreveport, and unduly prejudicial to glass manufacturers in Oklahoma and Arkansas.

3. Rates on like traffic to Jackson, Miss., Memphis, Tenn., and St. Louis and Kansas City, Mo., areas found not shown to be unjust or unreasonable.

4. Lawful rates and rate relations prescribed for the future.

J. A. Atkins, C. B. Bee, H. J. Conley, G. O. Nickel, B. F. Rea, and *T. W. Wood* for complainants.

Olin Culberson, Ernest O. Thompson, Beauford H. Jester, and *C. R. McNamee* for Railroad Commissioner of Texas.

H. C. Ames, V. W. Appleby, Ed. P. Byars, F. O. Holt, H. G. Huhn, F. G. Moore, O. T. Myerhoff, L. M. Shepardson, and *E. F. Underwood* for other interveners.

B. F. Batts, A. J. Baumann, James G. Blaine, Harry E. Boe, S. H. Brittingham, Jr., John P. Bullington, C. L.

Butler, William E. Davis, A. J. Maloney, G. H. Muckley, T. J. Schleef, W. R. Scruggs, R. H. Singleton, Cyril J. Smith, Robert Thompson, E. A. Trapp, Toll R. Ware, C. W. Waterman, Stanfield Johnson, Clyde W. Fiddes, and *Earle J. Zoll, Jr.,* for defendants.

REPORT OF THE COMMISSION

DIVISION 3, COMMISSIONERS MILLER, ROGERS, AND PATTERSON BY DIVISION 3:

Exceptions to the report proposed by the examiners were filed by complainants, defendants and interveners and we have heard the parties in oral argument.

Complainants, Corporation Commission of the State of Oklahoma and Arkansas Public Service Commission, on behalf of glass manufacturers at points in their States, including Fort Smith, Ark., and Ada, Blackwell, Henryetta, Okmulgee, Poteau, Sand Springs and Sapulpa, Okla., allege by complaint filed July 2, 1945, that the rates,[1] rules, regulations, and minimum weights applied on shipments of dense soda ash, in carloads, from North Baton Rouge and Lake Charles, La., and Corpus Christi, Tex., to the complaining points and to Wichita Falls, Palestine, and Waco, Tex., Shreveport, La., Jackson, Miss., Memphis, Tenn., and the St. Louis[2] and Kansas City,[3] Mo., areas, are unjust, unreasonable, unjustly discriminatory, unduly preferential of glass manufacturers at Palestine, Waco, Shreveport, Jackson, and in the St. Louis area, and unduly prejudicial to the complaining glass manufacturers, in violation of sections 1, 3 and 13 of the Interstate Commerce Act. Complainants asks us to prescribe lawful rates and rate relations for the future. As the complaint brings in issue, under section 13, the intrastate rates on this commodity to Palestine and Waco from Corpus Christi, and to Shreveport

[1] Rates will be stated in cents per 100 pounds. Increases authorized in 1946 are not included.

[2] Including St. Louis and Crystal City, Mo., and East St. Louis, Alton, Federal, Roxana, and Wood River, Ill.

[3] Including Kansas City, Dodson, Weldon Springs, Mo., and Kansas City, Kans.

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from Lake Charles and North Baton Rouge, copy of the complaint and notice of the proceeding was served on the State authorities of Texas and Louisiana. The Waco Chamber of Commerce and glass manufacturers at Palestine, Waco, Shreveport, Jackson, Alton, Ill., and other points, intervened in opposition to any increase in the rates to their destinations. The Southern Alkali Corporation, which produces soda ash at Corpus Christi, intervened in opposition to any disturbance of the origin relations, and the Railroad Commission of Texas also intervened.

Soda ash is a basic alkali in powdered form, known chemically as sodium carbonate (NA_2CO_3), produced by roasting or calcining a mixture of salt dissolved in water, limestone, and ammonia; 1.5 to 1.75 tons of salt, 2,700 pounds of limestone, and 3 to 4 pounds of ammonia being required to produce a ton of soda ash. About 130 pounds of coke to a ton of soda ash is required for burning the limestone, the other fuel being natural gas. Where not additionally processed, the product is known as light soda ash, with a densdensity ranging from 60 to 63 pounds per cubic foot, a value f. o. b. origin of about $14 per ton, used principally in the paper, soap, alumin, oil refining, and chemical industries. When dampened into crystals and run through a densifier, the resulting product is known as dense soda ash, with a density ranging from 60 to63 pounds per cubic foot, a value f. o. b. origin of about $15 per ton, used principally in the glass industry. When mixed with caustic soda or lye, the resulting product is known as modified soda ash, used principally in the manufacture of washing compounds. Light and dense soda ash are loaded into box cars with a spout or spray, and can be and are readily loaded to 80,000 and over 100,000 pounds per car, respectively.

Soda ash is and has for many years been produced at Detroit and Wyandotte, Mich., Barberton and Painesville, Ohio, Buffalo, Niagara Falls, and Syracuse, N. Y., and Saltville, Va., in official territory. It has been produced at Corpus Christi, Lake Charles, and North Baton Rouge since September and December, 1934 and March 1935, respectively. All three plants are served by water and the Missouri Pacific System, Corpus Christi and Lake Charles

are served by the Texas and New Orleans Railroad Company, and North Baton Rouge by the Illinois Central System.

The table set forth in the appendix is illustrative of the rate situation presented. The rate-making hauls from North Baton Rouge to Jackson, Memphis, and St. Louis are through southern territory, while the other hauls are in southwestern territory. Soda ash is rated fifth class in western classification. However, on March 17, 1930, by agreement among the shippers and carriers, it was accorded exception or column ratings of column 30, minimum 45,000 pounds, and column 22½, minimum 70,000 pounds, from and to points in the Southwest, the column 22½ basis being the same column basis as applies on soda ash in official territory, minimum 45,000 pounds, and about on the same level as the column 25 basis, minimum 40,000 pounds, to points in southern territory prescribed for soda ash and other soda products in *Mathieson Alkali Works v. Louisville & N. R. Co.*, 153 I. C. C. 784. The Column numbers are percentages of first class. The column 22½ basis still applies on soda ash within official territory, and this is likewise true of the column 25 basis to destinations in the South, except for certain water-compelled rates from the three Gulf plants to points on the Gulf and Mississippi River and truck-compelled rates to Jackson. However, since the commencement of production at the three Gulf plants, followed by the establishment of glass plants at Palestine and Waco, on July 1, 1941, and January 1, 1944, respectively, the column 22½ basis within the Southwest has been entirely superseded by a much lower group and differential adjustment, including rates to points on the Gulf and Mississippi and Missouri Rivers, to meet water competition, rates to Jackson to meet truck competition, rates to the St. Louis and Kansas City areas to meet the competition of the nearest official territory origin, generally Detroit, Mich., the rates from Corpus Christi and Lake Charles to the St. Louis area being applied over routes through Arkansas and applied as maxima to intermediate points in that State east of Fort Smith, with equalization or narrow origin differentials to enable the three Gulf plants

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to compete with each other, and with relatively low rates to Palestine, Waco and Shreveport to meet potential truck competition, and to encourage glass production at those points by applying as maxima, water-compelled rates to West Monroe, La., where paper is produced. This adjustment alternates with a rating of column 20, minimum 100,000 pounds, established on dense soda ash on May 10, 1942.

From the Gulf plants, the present rates to Memphis, Jackson, and Kansas City area average about 15 percent of first class, the present rates to Palestine, Waco, Shreveport, and the St. Louis area, average about 12 or 12.5 percent of first class, while the water-compelled rates to the Texas and Louisiana Gulf ports range from 6.4 to 10.6 percent of first class. In the meantime, the only adjustment that has been made from the Gulf plants to the complaining points and Wichita Falls is the reduction to the Kansas City basis in May 1941, and further reduction of 2 cents in February and March 1944, to alternate with the column 20 basis, resulting in an average level of about 17 percent of first class. Thus, the rates on dense soda ash from the Gulf plants to the complaining points and Wichita Falls are higher than any other corresponding rates of record, except those to the Kansas City area, and are higher, both absolutely and relatively, than the corresponding rates accorded glass manufacturers at Palestine, Waco, Shreveport, Jackson, and the St. Louis area. It is true that the basis accorded complainants is about on the same level, distance considered, as the corresponding rates on light soda ash to paper manufacturing points in eastern Arkansas, and the rates on soda ash from official territory origins to the complaining destinations, but the complaining manufacturers do not compete with the paper producers and there is no movement of soda ash from the official territory origins to Oklahoma and Arkansas. The present intrastate rates within Louisiana and Texas are maintained by authority of the respective State commissions. From the Gulf plants, water competition is keenest to the Gulf ports and there is combined water and market competition to the St. Louis area.

The importance of the rates on soda ash to glass manu-

facturers is indicated by the table below, which shows the receipts in 1944 of soda ash and other inbound raw materials by the principal complaining manufacturers, and the average of relative amounts of the various inbound materials used by one of the principal interveners in producing 30,000 pounds of glass:

	Complainants[1] Pounds	Intervener Pounds
Soda ash[2]	50,041,000	6,538
Limestone	25,646,000	6,491
Silica Sand	114,260,000	19,520
Feldspar	6,885,000	2,928
Cullet	42,814,000	—
Salt Cake	2,906,000	—
Borax[3]	736,000	—
Barytes	—	291
Fluorspar	—	43
Decolorizer	—	12

[1] Four companies unless otherwise noted.

[2] Five companies.

[3] Three companies.

The following is a summary of the competitive situation as disclosed by the record, insofar as material to this proceeding. One of the complaining manufacturers at Fort Smith makes window glass and markets its product west of the Mississipppi River and in portions of Tennessee, Mississippi, Alabama, Georgia, Florida, and Illinois in competition with the manufacturers at Shreveport. It obtains its soda ash from Lake Charles and Corpus Christi, and is severely handicapped by its relatively high rates on soda ash, which constitutes 10.1 percent of its inbound materials in weight and about 50 percent in cost (excluding cullet), as contrasted with silica sand, which constitutes 38.5 percent of its inbound materials in both weight and cost. Complaining manufacturers who produce and ship window glass, in competition with the Shreveport intervener, are located also at Henryetta and Okmulgee. The complaining manufacturer at Sand Springs makes glass jars and jelly glasses, markets its products west of the Mississippi River and east of the Rocky Mountains in competition with manufacturers at Palestine, Waco, Jackson,

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and Alton, and is severely handicapped by its relatively high rates on soda ash, which it obtains from North Baton Rouge and Corpus Christi and which constitutes about 25 percent of its inbound raw material in weight and from 50 to 60 percent in cost. Complaining manufacturers who produce and ship glass containers, in competition with the Palestine and Waco interveners, are located also at Ada, Blackwell, Okmulgee, Poteau, and Sapulpa.[4] There is no justification considering transportation and other conditions and circumstances, for a substantially different average level of rates on this traffic to the complaining points than to Palestine, Waco, and Shreveport. Interveners made no contrary contention at the hearing or on brief. However, on exceptions and oral argument, the Palestine and Waco interveners contend that "potential truck competition" precludes any increase in their present rates on soda ash. Of importance is the fact that to their points the rates are on a lower level than that of the corresponding rates to Jackson, Miss., which are affirmatively shown to have been truck compelled. Competition in the glass industry is keen. Unless the complaining manufacturers are accorded the same relative basis as their competitors at Palestine, Waco, and Shreveport they will be seriously affected.

The record is replete with comparisons of rates on the other raw materials and on the outbound glass products. These are presented principally for the purpose of showing their effect on the competitive situation. Thus the complaining manufacturers show that in their marketing territories the prices of their outbound products are generally based on the rates from the nearest manufacturer or manufacturers, namely, one or more of those at Palestine, Waco, Shreveport, Jackson or the St. Louis area, while the Palestine and Waco interveners show that the total of

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[4] Other complaining manufacturers which produce glass specialties are located at Fort Smith, Okmulgee, and Sapulpa, and may encounter competition in the future from the Palestine and Waco interveners. As this competition is merely potential, it should be understood that these complainants do not come within the purview of our findings hereinafter made under sections 3 and 13 of the Act. See *Hoffstot* v. *Monongahela Ry. Co.*, 248 I. C. C. 248, 253.

the outbound charges on 30,000 pounds of glass containers and the inbound charges on the principal raw materials used therein, based on intervener's relative amounts as shown above, is in certain instances somewhat greater via Palestine and Waco than via the complaining points, even with the latters' relatively high inbound rates on soda ash. In interveners' showing, the raw material origins used are Corpus Christi or Lake Charles for soda ash, Guion, Ark., or Roff, Okla., for silica sand, Mosher or Joplin, Mo., for limestone, Denver, Colo., for feldspar, Mineral Point, Mo., for barytes, and Salida, Colo., for fluorspar, and the destinations used for the finished product are 12 in number, viz., Memphis, Kansas City, and Rogers, Ark., 4 destinations in Oklahoma, and 5 in Texas. Of course, such a showing would vary according to the destinations used and the relative amounts and origins of the raw materials. Here the 4 Oklahoma destinations used are all in the complaining territory. In any event, the complaining manufacturers are generally accorded outbound rates on their finished products and inbound rates on their raw materials other than soda ash no more favorable than those of their competitors. To destinations to which their aggregate freight charges may be somewhat less than those of their competitors, they are unduly deprived of the benefit of their geographical location by their relatively high rates on soda ash.

Based on a loading of 100,000 pounds, the yields per car-mile from column 12, 15, and 17 rates range from about 75, 94, and 107 cents for 240 miles to 40, 50, and 57 cents for 800 miles, which the average haul in the southwestern region is about 240 miles, and the average car-mile expenses are about 17 cents. The present intrastate rate on soda ash from Corpus Christi to Palestine and Waco, of 19 cents for an average distance of about 335 miles yields about 11 mills per ton-mile, as compared with the average ton-mile yield of all Texas lines of about 10 mills for 180 miles. However, comparisons of earnings on a given commodity with average earnings or expenses on all traffic are not particularly apposite.

Numerous point-to-point rates on other commodities within the Southwest are shown of record, some higher and

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some lower than the rates assailed, distance considered. The better comparisons with rates on other commodities are the rates prescribed by the Commission for general application in the Southwest on other heavy loading commodities, including the following having representative values per ton f. o. b. origin as given in parentheses: about column 8 on silica sand ($1.50), column 11 on crude clay ($3.50-$7.19), column 12 on phosphate rock ($3.00), column 12½ and 15 on scrap iron and steel ($16.74), about column 13 on cement ($8), column 14 on ground barite or barytes ($12.65-$13.30), column 15 on oyster shells ($8-$10) and cullet ($3-$6), column 16 on bulk salt ($3.73), and column 17½ on rough stone blocks ($12.22).

Complainants and the intervening glass producers propose that the rates to the complaining plants and Wichita Falls, Memphis, Jackson, and the Kansas City area be reduced so as to be on the same average level as the rates to Palestine, Waco, Shreveport, and the St. Louis area, namely, about column 12. This would result in a 30 percent reduction in the rates to the complaining plants and Wichita Falls, or from 35-37 to 26 cents, and about a 20 percent reduction to Memphis, Jackson, and the Kansas City area, to which the rates now average about column 15.

Defendants propose that no change be made in the rates to the complaining plants and Wichita Falls, or in the rates to Memphis, Jackson, or the Kansas City and St. Louis areas, made to meet water, market, and truck competition, and that the rates to Palestine, Waco and Shreveport be increased so as to be on substantially the same average level as the present rates to the complaining plants and Wichita Falls, namely, column 17. Specifically, defendants propose that the rates from North Baton Rouge, Lake Charles, and Corpus Christi to Shreveport be increased from 17, 17, and 19 cents, to 21, 21, and 25 cents, respectively, to Palestine from 19, 17, and 19 cents respectively, to 25 cents, and to Waco from 21, 19, and 19 cents, to 30, 28, and 28 cents, respectively. Defendants filed an application with the Louisiana Commission for authority to establish the proposed intrastate rate of 21 cents to Shreveport from Lake Charles and North Baton Rouge, and with the Texas

Commission for authority to establish the proposed intrastate rates of 25 and 28 cents to Palestine and Waco from Corpus Christi. The latter was denied by the Texas Commission, whereupon defendants postponed any adjustment of the interstate and intrastate rates to the three points named pending the outcome of this proceeding.

Interveners object to the rates proposed by defendants to Palestine, Waco, and Shreveport, not only because of the level of the rates but because of the resulting disruption in the present origin and destination relations in connection with such rates. No evidence was adduced to warrant any substantial disruption in the origin relations, or in the destination relations except for such adjustment as may be necessary to narrow the spread [5] between the complaining points and Wichita Falls and Palestine, Waco, and Shreveport. The Corpus Christi intervener affirmatively shows that the present group and differential adjustment on this traffic is no more extensive than on numerous other commodities, including salt cake, feldspar, and imported sodium and potassium.

The conclusion is justified that lawfulness in the rates required that the 100 percent spread between the rates to the complaining points and Wichita Falls and rates to Palestine, Waco, and Shreveport be narrowed by reducing the former and increasing the latter substantially to a common level subject to a high minimum, or specifically the rates to the complaining points and Wichita Falls should be reduced 4, 5, and 6 cents to 31 cents, while the rates to Palestine, Waco, and Shreveport should be increased by 4 cents, thus substantially preserving the present origin relations, and the present destination relations as between Palestine, Waco and Shreveport. As is characteristic of a group and differential adjustment, rates thus prescribed will, of course, bear a progressively lower relation to first class as distance increases. Thus to the Louisiana and Texas destinations an increase of 4 cents would result in rates that range from 21 cents, or 17.8 percent of first

[5] This spread is about 100 percent of the lower rates. The parties agree that it should be narrowed but differ as to how this should be accomplished.

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class, from Lake Charles to Shreveport, 174 miles, to 25 cents or 13.1 percent of first class, from North Baton Rouge to Waco, 441 miles, while to the complaining group, reductions of 4, 5, and 6 cents would result in a rate ranging from 17.5 percent of first class from Lake Charles to Poteau, 408 miles, to 12.5 percent of first class from Corpus Christi to Blackwell, 717 miles. Under this adjustment the rate from Corpus Christi to the St. Louis area, 31 cents, will not be exceeded. The rates to Memphis, Jackson, and the Kansas City area, although made to meet water, truck, and market competition, are substantially in line with rates prescribed by the Commission on other heavy loading commodities, for general application in the Southwest. The rates to the St. Louis area are relatively lower than such prescribed rates, but are made to meet compelling water and market competition.

Complainants' rates are generally subject to a minimum of 100,000 pounds, while those of their competitors are generally subject to a minimum of 80,000 pounds. Defendants and the intervening glass producers do not oppose an increase in the carload minimum to Palestine, Waco, and Shreveport to 100,000 pounds, and the Texas Commission expresses willingness to approve such increase in connection with the intrastate rates from Corpus Christi to Palestine and Waco, upon the filing of an appropriate application. For such a high minimum rates are justified that are relatively lower than rates that would be recognized as reasonable maxima for a minimum of 40,000 pounds which was prescribed in connection with rates on soda ash to destinations in southern territory.

As stated by the intervening manufacturers, in order to establish unlawful person-locality preference and prejudice within the meaning of sections 3 or 13 of the act, it must not only be shown that there is an unjustified disparity in rates from a transportation standpoint, but that there is substantial competition between the complaining parties and those alleged to be preferred so that the rate disparity may be said to result in disadvantage to the former and corresponding advantage to the latter. Complainant must show that shipments have been or will be made or prevented or that complainant has been or will be otherwise injured be-

cause of the rate of disparity. We are here dealing with rates on an inbound raw material. In the nature of things the exact effect on the marketing of the finished product can not be shown. The language of sections 3 and 13 is broad and contains sweeping prohibitions against every form of undue prejudice, preference, advantage, or disadvantage, or unjust discrimination, as between persons and localities. There is real substantial, and unwarranted disparity in the inbound rates on soda ash, an important raw material in the manufacture of glass, and there is keen competition in the sale of the finished products between the complaining manufacturers who are subjected to the relatively high rates and those at Palestine, Waco, and Shreveport who are accorded the relatively low rates. Such rate disparity results and will result pro tanto in depriving the complaining manufacturers of that fair opportunity to which the law entitles them.

Soda ash is generally sold on the basis of the freight rate from the nearest of lowest-rated point of origin. Complainants therefore contend that rates on this traffic should be based on the distance from such origin. These distances have been considered. We see no reason, however, for any substantial disruption of the origin relation and grouping and the average distance from the three origins therefore must also be considered.

We Find:

1. That the rates assailed to the complaining points and Wichita Falls are, and for the future will be, unjust and unreasonable to the extent that they exceed, or may exceed, 31 cents plus the increase of 20 percent authorized December 5, 1946.

2. That the rates assailed to the complaining points and Palestine, Waco, and Shreveport are, and for the future, will be, unduly prejudicial and preferential and unjustly discriminatory against the interstate traffic of the complaining manufacturers in favor of glass manufacturers at such other points to the extent that they bear a relation less favorable to the former and more favorable to the latter than is reflected by the prescribed rate of 31 cents to the complaining points plus the increase of 20 percent author-

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ized December 5, 1946, and rates 4 cents higher than the present rates to Palestine, Waco, and Shreveport, plus a like increase of 20 percent, and that such preference, prejudice and discrimination as between interstate and intrastate commerce is caused in part by the maintenance of relatively low intrastate rates from North Baton Rouge, and Lake Charles to Shreveport, and from Corpus Christi to Palestine, and Waco to the extent that such intrastate rates are below those prescribed herein.

3. That such undue prejudice and preference and unjust discrimination can and should be removed by the establishment and maintenance of the prescribed rate to the complaining points and rates 4 cents higher than the present rates to Palestine, Waco, and Shreveport, plus the 20-percent increase, which rates we find to be just and reasonable.

4. That the rates herein prescribed shall be subject to a uniform minimum not exceeding 100,000 pounds.

5. That the rates assailed to Memphis, Jackson, and the Kansas City and St. Louis areas are not shown to be unjust or unreasonable. There is no warrant upon the facts of record for prescription of fixed relations between rates to these points and rates to the complaining points.

An appropriate order will be entered requiring establishment of the rates on interstate traffic herein prescribed. Following our practice in such cases, we shall for the present leave it to defendants and the Louisiana and Texas Commissions to make modifications in accordance with our findings as to intrastate traffic in those States. If this is not accomplished by the time the interstate schedules are required to be filed, the matter may be brought to our attention.

Docket No. 29354

APPENDIX

RATES ON DENSE SODA ASH, IN CARLOADS

From / To	North Baton Rouge, La.			Lake Charles, La.			Corpus Christi, Tex.		
		Rates			Rates			Rates	
	Distance Miles	Present Cents	Prescribed[1] Cents	Distance Miles	Present Cents	Prescribed[1] Cents	Distance Miles	Present Cents	Prescribed[1] Cents
Fort Smith, Ark.	489	37	31	437	36	31	671	37	31
Ada, Okla.	516	37	31	461	37	31	564	37	31
Blackwell, Okla.	701	37	31	646	37	31	717	37	31
Henryetta, Okla.	575	37	31	521	37	31	623	37	31
Okmulgee, Okla.	583	37	31	532	37	31	636	37	31
Poteau, Okla.	459	37	31	408	35	31	642	37	31
Sand Springs, Okla.	603	37	31	552	37	31	683	37	31
Sapulpa, Okla.	608	37	31	557	37	31	668	37	31
Wichita Falls, Tex.	550	37	31	493	37	31	515	37	..
Shreveport, La.	225	17	[2]21	174	17	[2]21	454	19	23
Palestine, Tex.	363	19	23	244	17	21	358	19	[2]23
Waco, Tex.	441	21	25	316	19	23	313	19	[2]23
Jackson, Miss.	167	20	..	299	22	..	654	25	..
Memphis, Tenn.	368	29	..	431	29	..	776	31	..
St. Louis, Mo.	657	29	..	692	29	..	999	31	..
Kansas City, Mo.	787	39	..	734	39	..	890	39	..

[1] Subject to an increase of 20 percent as authorized December 5, 1946, on interstate shipments of soda ash.

[2] Intrastate.

ORDER

At a Session of the INTERSTATE COMMERCE COMMISSION, DIVISION 3, held at its office in Washington, D. C., on the 3rd day of March, A. D. 1947

No. 29354

CORPORATION COMMISSION, State of Oklahoma, and Arkansas Public Service Commission

v.

ABILENE & SOUTHERN RAILWAY COMPANY; ALTON & SOUTHERN RAILROAD; The Alton Railroad Company (Henry A. Gardner, Trustee); Arkansas & Louisiana Missouri Railway Company; The Arkansas Western Railway Company; The Atchison, Topeka and Santa Fe Railway Company; Burlington-Rock Island Railroad Company; Chicago and Eastern Illinois Railroad Company; Chi-

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cago & Illinois Midland Railway Company; Chicago, Burlington & Quincy Railroad Company; The Chicago, Rock Island and Pacific Railway Company, (Joseph B. Fleming and Aaron Colnon, Trustees); Columbus and Greenville Railway Company; The Denison and Pacific Suburban Railway Company; El Dorado and Wesson Railway Company; Fort Smith, Subiaco & Rock Island Railroad Company; Fort Worth and Denver City Railway Company; Galveston, Houston and Henderson Railroad Company; Gulf and Ship Island Railroad Company; Gulf, Colorado and Santa Fe Railway Company; Gulf, Mobile and Ohio Railroad Company; Illinois Central Railroad Company; Illinois Terminal Railroad Company; The Joplin-Pittsburgh Railroad Company; Kansas City Public Service Company; The Kansas City Southern Railway Company; Kansas, Oklahoma & Gulf Railway Company; Litchfield and Madison Railway Company; Louisiana & Arkansas Railway Company; The Louisiana and North West Railroad Company; Louisville and Nashville Railroad Company; Midland Valley Railroad Company; Mississippi Central Railroad Company; Missouri and Arkansas Railway Company; Missouri-Illinois Railroad Company; Missouri-Kansas-Texas Railroad Company; Missouri-Kansas-Texas Railroad Company of Texas; Missouri Pacific Lines; Missouri Pacific Railroad Company (Guy A. Thompson, Trustee); The Beaumont, Sour Lake & Western Railway Company (Guy A. Thompson, Trustee); Houston and Brazos Valley Railway Company (Guy A. Thompson, Trustee); International-Great Northern Railroad Company (Guy A. Thompson, Trustee); New Iberia & Northern Railroad Company (Guy A. Thompson, Trustee); New Orleans, Texas & Mexico Railway Company (Guy A. Thompson, Trustee); The Orange & Northwestern Railroad Company (Guy A. Thompson, Trustee); Rio Grande City Railway Company (Guy A. Thompson, Trustee); The St. Louis, Brownsville and Mexico Railway Company (Guy A. Thompson, Trustee); San Antonio Southern Railway Company (Guy A. Thompson, Trustee); San Antonio, Uvalde & Gulf Railroad Company (Guy A.

Thompson, Trustee); Sugar Land Railway Company (Guy A. Thompson, Trustee); The Nacogdoches & Southeastern Railroad Company; The Nashville, Chattanooga & St. Louis Railway; Natchez & Southern Railway Company (Guy A. Thompson, Trustee); The Natchez, Urania and Ruston Railway Company; New Orleans and Northeastern Railroad Company; The New York Central Railroad Company; The New York, Chicago and St. Louis Railroad Company; North Louisiana & Gulf Railroad Company; Oklahoma City-Ada-Atoka Railway Company; Okmulgee Northern Railway Company; Panhandle and Santa Fe Railway Company; The Pennsylvania Railroad Company; Roscoe, Snyder and Pacific Railway Company; The St. Louis and O'Fallon Railway Company; St. Louis & Troy Railroad Company; St. Louis and Ohio River Railroad; St. Louis, San Francisco and Texas Railway Company; St. Louis-San Francisco Railway Company (Frank A. Thompson, Trustee); St. Louis Southwestern Railway Company (Berryman Henwood, Trustee); St. Louis Southwestern Railway Company of Texas (Berryman Henwood, Trustee); San Springs Railway Company; Texas and New Orleans Railroad Company; Southern Railway Company; The Texas and Pacific Railway Company; Texas Electric Railway Company; The Texas Mexican Railway Company; Texas Short Line Railway Company; Tremont & Gulf Railway Company; Tulsa-Sapulpa Union Railway Company; Union Railway Company; Wabash Railroad Company; Waco, Beaumont, Trinity & Sabine Railway Company (Hoxie H. Thompson, Receiver); The Weatherford, Mineral Wells and Northwestern Railway Company; Wichita Falls & Southern Railroad Company; The Wichita Valley Railway Company; and The Yazoo and Mississippi Valley Railroad Company.

This proceeding being at issue upon complaint and answers on file, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been made, and said division having, on

the date hereof, made and filed a report containing its findings of fact and conclusions thereon, which report is hereby referred to and made a part hereof:

It is ordered, That defendants, according as they participate in the transportation, be, and they are hereby, notified and required to cease and desist, on or before June 12, 1947, and thereafter to abstain, from publishing, demanding, or collecting for the interstate transportation of dense soda ash, in carloads, from and to the points named in the next succeeding paragraph hereof, a rate and minimum which exceed those prescribed in said paragraph.

It is further ordered, That defendants, according as they participate in the transportation, be, and they are hereby, notified and required to establish, on or before June 12, 1947, upon notice to the Commission and the general public by not less than 30 days' filing in the manner prescribed in Section 6 of the Interstate Commerce Act, and thereafter to maintain and apply to the interstate transportation of dense soda ash, in carloads, subject to a minimum not exceeding 100,000 pounds, from Corpus Christi, Tex., and North Baton Rouge and Lake Charles, La., to Fort Smith, Ark., Ada, Blackwell, Henryetta, Okmulgee, Poteau, Sand Springs, and Sapulpa, Okla., and points grouped therewith and from North Baton Rouge and Lake Charles, La., to Wichita Falls, Texas, a rate which shall not exceed 31 cents per 100 pounds plus the increase of 20 pereent authorized in *Increased Railway Rates, Fares, and Charges,* 1946, 266 I. C. C., 537.

It is further ordered, That defendants, according as they participate in the transportation, be, and they are hereby notified to cease and desist, on or before June 12, 1947, and thereafter to abstain from publishing, demanding or collecting for the interstate transportation of dense soda ash, from and to the points named in the next succeeding paragraph hereof, rates less than those prescribed in said paragraph.

It is further ordered, That defendants, according as they participate in the transportation, be, and they are hereby, notified and required to establish, on or before June 12,

1947, upon notice to this Commission and to the general public by not less than 30 days' filing and posting in the manner prescribed in section 6 of the Interstate Commerce Act, and thereafter to maintain and apply to the interstate transportation of dense soda ash, in carloads, subject to the minimum maintained in connection with interstate rates prescribed in the third preceding paragraph hereof, from North Baton Rouge and Lake Charles, La., to Palestine and Waco, Tex., and from Corpus Christi, Tex., to Shreveport, La., rates which shall not be less than those designated as prescribed rates in the appendix to said report plus the increase of 20 percent authorized in *Increased Railway Rates, Fares, and Charges,* 1946, 266 I. C. C. 537.

And it is further ordered, That this order shall continue in force until the further order of the Commission.

By the Commission, division 3.

W. P. BARTEL,
Secretary.

(SEAL)

APPENDIX "B"

ORDER

At a General Session of the Interstate Commerce Commission, held at its office in Washington, D. C., on the 4th day of September, A. D. 1947

No. 29354

CORPORATION COMMISSION, STATE OF OKLAHOMA, et al.,

v.

MISSOURI PACIFIC RAILROAD COMPANY, et al.

Upon further consideration of the record in the above-entitled proceeding, and upon consideration of defendants' petition for reconsideration; petition of Knox Glass Bottle Co. of Mississippi and Owens-Illinois Glass Co., interveners, for reargument and reconsideration; petition of Libbey-

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Owens-Ford Glass Co., intervener, for rehearing; petition of Railroad Commission of Texas for reconsideration; and petition of Louisiana Public Service Commission for rescission, annulment, and cancellation of order; and for good cause appearing:

It is ordered, That said petitions be, and they are hereby, denied.

By the Commission.

W. P. Bartel,
Secretary.

[SEAL.]

APPENDIX "C"

ORDER

At a Session of the Interstate Commerce Commission, Division 3, held at its office in Washington, D. C., on the 25th day of May, A. D. 1948

No. 29354

CORPORATION COMMISSION, STATE OF OKLAHOMA and ARKANSAS PUBLIC SERVICE COMMISSION

v.

ABILENE & SOUTHERN RAILWAY COMPANY; ALTON & SOUTHERN RAILROAD; The Alton Railroad Company (Henry A. Gardner, Trustee); Arkansas & Louisiana Missouri Railway Company; The Arkansas Western Railway Company; The Atchison, Topeka and Santa Fe Railway Company; Burlington Rock-Island Railroad Company; Chicago and Eastern Illinois Railroad Company; Chicago & Illinois Midland Railway Company; Chicago, Burlington & Quincy Railroad Company; The Chicago, Rock Island and Pacific Railway Company (Joseph B. Fleming and Aaron Colnon, Trustees); Columbus and Greenville Railway Company; The Denison and Pacific Suburban Railway Company; El Dorado and Wesson Railway Company; Fort Smith, Subiaco & Rock Island Railroad Company; Fort Worth and Denver City Railway Company; Gal-

veston, Houston and Henderson Railroad Company; Gulf and Ship Island Railroad Company; Gulf, Colorado and Santa Fe Railway Company; Gulf, Mobile and Ohio Railroad Company; Illinois Central Railroad Company; Illinois Terminal Railroad Company; The Joplin-Pittsburgh Railroad Company; Kansas City Public Service Company; The Kansas City Southern Railway Company; Kansas, Oklahoma & Gulf Railway Company; Litchfield and Madison Railway Company; Louisiana & Arkansas Railway Company; The Louisiana and North West Railroad Company; Louisville and Nashville Railroad Company; Midland Valley Railroad Company; Mississippi Central Railroad Company; Missouri and Arkansas Railway Company; Missouri-Illinois Railroad Company; Missouri-Kansas-Texas Railroad Company; Missouri-Kansas-Texas Railroad Company of Texas; Missouri Pacific Lines; Missouri Pacific Railroad Company (Guy A. Thompson, Trustee); The Beaumont, Sour Lake and Western Railway Company (Guy A. Thompson, Trustee); Houston and Brazos Valley Railway Company (Guy A. Thompson, Trustee); International-Great Northern Railroad Company (Guy A. Thompson, Trustee); New Iberia & Northern Railroad Company (Guy A. Thompson, Trustee); New Orleans, Texas & Mexico Company (Guy A. Thompson, Trustee); The Orange & Northwestern Railroad Company (Guy A. Thompson, Trustee); Rio Grande City Railway Company (Guy A. Thompson, Trustee); The St. Louis, Brownsville and Mexico Railway Company (Guy A. Thompson, Trustee); San Antonio Southern Railway Company (Guy A. Thompson, Trustee); San Antonio, Uvalde & Gulf Railroad Company (Guy A. Thompson, Trustee); Sugar Land Railway Company (Guy A. Thompson, Trustee); The Nacogdoches & Southeastern Railroad Company; The Nashville, Chattanooga & St. Louis Railway; Natchez & Southern Railway Company (Guy A. Thompson, Trustee); The Natchez, Urania and Ruston Railway Company; New Orleans and Northeastern Railroad Company; The New York Central Railroad Company; The New York, Chicago and St. Louis Railroad Company; North Louisiana & Gulf Railroad Company; Oklahoma City-Ada-Atoka Railway Company;

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Okmulgee Northern Railway Company; Panhandle and Santa Fe Railway Company; The Pennsylvania Railway Company; Roscoe, Snyder and Pacific Railway Company; The St. Louis and O'Fallon Railway Company; St. Louis & Troy Railroad Company; St. Louis and Ohio River Railroad; St. Louis, San Francisco and Texas Railway Company; St. Louis-San Francisco Railway Company (Frank A. Thompson, Trustee); St. Louis Southwestern Railway Company (Berryman Henwood, Trustee); St. Louis Southwestern Railway Company of Texas (Berryman Henwood, Trustee); Sand Springs Railway Company; Texas and New Orleans Railroad Company; Southern Railway Company; The Texas and Pacific Railway Company; Texas Electric Railway Company; The Texas Mexican Railway Company; Texas Short Line Railway Company; Tremont & Gulf Railway Company; Tulsa-Sapulpa Union Railway Company; Union Railway Company; Wabash Railroad Company; Waco, Beaumont Trinity & Sabine Railway Company (Hoxie H. Thompson, Receiver); The Weatherford, Mineral Wells and Northwestern Railway Company; Wichita Falls & Southern Railroad Company; The Wichita Valley Railway Company; and The Yazoo and Mississippi Valley Railroad Company.

It appearing, That by report and order in this proceeding dated March 3, 1947, which are hereby referred to and made parts hereof, said division prescribed, under sections 1, 3, and 13, of the Interstate Commerce Act, on dense soda ash, in carloads, from North Baton Rouge and Lake Charles, La., and Corpus Christi, Texas, an interstate basic rate of 31 cents to the plants of the complaining glass manufacturers at Fort Smith, Ark., and Ada, Blackwell, Henryetta, Okmulgee, Poteau, Sand Springs, and Sapulpa, Okla., and basic rates 4 cents higher than the then-existing basic rates to the plants of the intervening glass manufacturers at Palestine and Waco, Tex., and Shreveport, La., the rates from North Baton Rouge and Lake Charles to Palestine and Waco and from Corpus Christi to Shreveport being interstate, and from North Baton Rouge and Lake Charles to Shreveport and from Corpus Christi to Palestine and Waco being

intrastate, and found the then existing basic rates to be unduly prejudicial and preferential and unjustly discriminatory against the interstate traffic of the complaining glass manufacturers in favor of the intervening glass manufacturers to the extent that they bear a relation less favorable to the former and more favorable to the latter than would be reflected by such prescribed rates;

It further appearing, That petitions for modification of said prescription and findings were filed by defendants, intervening glass manufacturers, the Railroad Commission of Texas, and the Louisiana Public Service Commission, and that said petitions were denied by the entire Commission by order dated September 4, 1947;

It further appearing, That by said report and order of March 3, 1947, as subsequently modified, said division required the establishment and maintenance of such prescribed rates on interstate traffic but that, following the practice of the Commission in such cases, left it to defendants and the Louisiana and Texas Commissions to make modifications in accordance with its findings as to intrastate traffic, and provided that if this was not accomplished by the time the interstate schedules are required to be filed, the matter might be brought to its attention;

And it further appearing, That the basic rates so prescribed, as modified by the general increases in 1946 and 1948, have been made effective on interstate traffic, and that said general increases have likewise been made effectively in the intrastate rates in Louisiana and Texas by authority of the respective State Commissions, but that said Commissions have failed or refused to authorize the 4-cent increase in the basic rates on such traffic as prescribed by said division, and that defendants have brought this matter to our attention;

It is ordered, That defendants, according as they participate in the transportation, be, and they are hereby, notified and required to cease and desist on or before July 19, 1948, upon notice to the Commission and the general public by not less than 30 days' filing and posting in the manner prescribed in section 6 of the Interstate Commerce Act, and thereafter to abstain from practicing the unjust discrimination, undue prejudice and preference found to

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exist in said report in the relation between the interstate rates on the above-described traffic to the plants of the complaining glass manufacturers, on the one hand, and the intrastate rates on like traffic to the plants of the intervening glass manufacturers, on the other;

It is further ordered, That defendants, according as they participate in the transportation, be, and they are hereby notified and required to cease and desist on or before July 19, 1948, upon notice to the Commission and the general public by not less than 30 days' filing and posting in the manner prescribed in section 6 of the Interstate Commerce Act, and thereafter to abstain from publishing, demanding, or collecting for the intrastate transportation of dense soda ash, in carloads, from and to the points named in the next succeeding paragraph hereof, rates less than those prescibed in said paragraph;

It is further ordered, That defendants, according as they participate in the transportation, be, and they are hereby notified and required to establish on or before July 19, 1948, upon notice to the Commission and the general public by not less than 30 days' filing and posting in the manner prescribed in section 6 of the Interstate Commerce Act, and thereafter to maintain and apply to the intrastate transportation of dense soda ash, in carloads, subject to the minimum maintained in connection with the interstate rates prescribed in said order of March 3, 1947, Exhibit "D", from North Baton Rouge and Lake Charles, La., to Shreveport, La., and from Corpus Christi, Tex., to Palestine and Waco, Tex., rates which shall not be less than those designated as prescribed rates in the appendix to said report, plus the general increases authorized in *Increased Railway Rates, Fares, and Charges, 1946,* 266 I. C. C. 537, *Increased Freight Rates, 1947,* 269 I. C. C. 33, and in the mimeographed report decided April 13, 1948, in the latter proceeding.

And it is further ordered, That this order shall continue in force until the further order of the Commission.

By the Commission, division 3.

W. P. Bartel,
Secretary.

[SEAL.]

APPENDIX "D"

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF OKLAHOMA

No. 4004 (Civil)

THE STATE OF TEXAS, ET AL., *Petitioners,*

vs.

THE UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION, *Respondents*

MEMORANDUM AND FINDINGS OF FACT AND CONCLUSIONS OF LAW

This is a suit under the Urgent Deficiencies Act (38 Stat. 208, 28 U. S. C. A. 43-48) to annul and set aside an order of the Interstate Commerce Commission, prescribing intrastate freight rates on dense soda ash, from points of production at Corpus Christi, Texas, to Waco and Palestine, Texas, where it is used as a raw product in the manufacture of glass products; and from points of production at Lake Charles and Baton Rouge, Louisiana, to Shreveport, Louisiana, where it is also used in the manufacture of glass products.

The order, dated May 25, 1948, was made, after hearing, on complaint of the Corporation Commission of Oklahoma, and the Public Service Commission of Arkansas, on behalf of glass manufacturers in those States, who alleged that the State-prescribed intrastate freight rates on the soda ash from the points of production to points of manufacture within the States of Texas and Louisiana, were preferential of the local glass manufacturers, and prejudicial to competing manufacturers in the States of Arkansas and Oklahoma. The shipments from Corpus Christi to Palestine and Waco, Texas, carried a state-prescribed rate of 19 cents per cwt. in carload lots, minimum weight 100,000 pounds per car. Shipments from Lake Charles and Baton Rouge to Shreveport, carried a state-prescribed rate of 17 cents per cwt. in minimum carload lots of 100,000 pounds. The interstate

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rates from the same producing points in Texas and Louisiana to the manufacturing points in Arkansas and Oklahoma, carried a group rate of 31 cents per cwt.

The Commission's order is based upon its findings and report, entered March 3, 1947, which pertinently recites that:

"2. That the rates assailed to the complaining points [Fort Smith, Arkansas, and Ada, Blackwell, Henryetta, Okmulgee, Poteau, Sand Springs and Sapulpa, Oklahoma] and Palestine, Waco, and Shreveport, Louisiana, are, and for the future will be, unduly prejudicial and preferential and unjustly discriminatory against the interstate traffic of the complaining manufacturers in favor of glass manufacturers at such other points to the extent that they bear a relation less favorable to the former and more favorable to the latter than is reflected by the prescribed rate of 31 cents to the complaining points plus the increase authorized December 20, 1946, and rates 4 cents higher than the present rates to Palestine, Waco, and Shreveport, plus a like increase of 20 per cent, and that such preference, prejudice and discrimination as between interstate and intrastate commerce is caused in part by the maintenance of relatively low intrastate rates from North Baton Rouge and Lake Charles to Shreveport and from Corpus Christi to Palestine and Waco the extent that such intrastate rates are below those prescribed herein."

The effect of this finding and subsequent order of May 25, 1948, was to require the respondent rail carriers to increase their freight charges on dense soda ash from 17 cents to 21 cents on intrastate movements from North Baton Rouge and Lake Charles to Shreveport, and from 19 cents to 23 cents on intrastate movements of dense soda ash from Corpus Christi to Palestine and Waco. The Commission also found that the interstate rates to manufacturing points in Oklahoma and Arkansas were unreasonably high, and ordered them to be reduced, but no attack is made on that part of the order. Following the entry of said report and order of March 3, 1947, petitions for rehearing and reconsideration were filed with the Commission and denied by the entire Commission by order of September 4, 1947.

The Railroad Commission of Texas, and the Public Service Commission of Louisiana, denied the carriers' application to increase the intrastate rates in conformity with the order of the Interstate Commerce Commission, and brought this suit, contending that there is no substantial evidence tending to show that the intrastate rates assailed are unreasonably low per se; that on the contrary, it is shown that these rates are fair and compensatory in comparison with rates of other comparable commodities for the same or similar distances. And second, it is contended that rate disparity alone does not justify a finding of undue or unreasonable preference or prejudice, but such disparity must result in injurious competition to the complaining glass manufacturers in Oklahoma and Arkansas, and that there is no such evidence in this case.

If, after a full hearing, the Interstate Commerce Commission finds any undue or unreasonable advantage, preference or prejudice as between persons or localities in intrastate commerce on the one hand, and interstate or foreign commerce on the other, it is empowered under Section 13(4) of the Interstate Commerce Act, to prescribe an intrastate rate which in its judgment, will remove such advantage, preference, prejudice, or discrimination, despite any decision or order of any state authority to the contrary. Houston & Texas Ry. v. United States, 234 U. S. 342; Minnesota Rate cases, 230 U. S. 352; Florida v. United States, 282 U. S. 194.

The Commission is also empowered by the same Section of the Act to prescribe intrastate rates on a statewide level, if necessary to prevent any undue, unreasonable or unjust discrimination against interstate commerce as a whole. Thus, if the Commission finds that the intrastate rates charged and collected do not contribute their fair share to the maintenance of an adequate railway system, it is empowered to prescribe such intrastate rates as in its judgment will pay a fair proportionate share of the cost of maintenance of the transportation system. i. e. see Wisconsin R. R. Commission v. C. B. & Q. R. R. Co., 257 U. S. 563; State of New York v. United States, 257 U. S.

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591; Florida v. United States, supra; North Carolina v. United States, 325 U. S. 507.

But we are not concerned with discrimination against interstate commerce as a whole, because of the insufficiency of the intrastate rates to bear their just and equitable share of the cost of maintaining an adequate transportation system, as in the cases last cited. We therefore have no occasion to consider whether the intrastate rates in this case are fairly compensatory to the charging carriers. We have the question whether the intrastate rates charged and collected over specific routes of a railway system operate to give an undue or unreasonable preference or advantage to persons engaged in intrastate commerce over persons engaged in interstate commerce. In other words, we are dealing with rates in their relationship to each other, not in their relationship to adequate income. See Florida v. United States, supra, p. 214.

If the rates are unduly or unreasonably preferential to intrastate manufacturers, and prejudicial to the interstate manufacturers, the Commission may eliminate the forbidden preference and prejudice, even though the intrastate rates are compensatory. See Ayrshire Collieries Corp. v. United States, —— U. S. ——, decided January 3, 1949; New York v. United States, 331 U. S. 284, 344. But regardless of the underlying basis for the exertion of the Commission's power to prescribe intrastate rates, it must clearly appear from the evidence that the exercise of the dominant power is essential to the protection and advancement of interstate commerce, and that the power exercised is no more than sufficient to correct the prohibited detriment. North Carolina v. United States, supra; Florida v. United States, supra.

The Commission's order in this case explicitly recognizes that disparity alone between particular rates on intrastate and interstate traffic does not empower it to prescribe intrastate rates. Indeed, it recognizes that injurious competition between persons and localities engaged in intrastate and interstate commerce is a sine qua non to a finding of undue or unreasonable advantage, prejudice or preference, adversely affecting interstate commerce. It found

"real, substantial and unwarranted disparity in the inbound rates on soda ash, an important material in the manufacture of glass", and that there was "keen competition in the sale of finished products between the complaining manufacturers, who are subjected to the relatively high rates, and those at Palestine, Waco and Shreveport, who are accorded the relatively low rates." It was of the opinion that "such rate disparity results and will result pro tanto in depriving the complaining manufacturers of that fair opportunity to which the law entitled them." See 266 I. C. C., p. 203. It did not stop with generalizations. It particularized the competitive situation between those manufacturers of glass products who pay intrastate rates, and those paying interstate rates, and it was at pains to show specifically the effect of the cost of this important raw material upon the competitive advantages in the open market for the same glass products.

To paraphrase Mr. Justice Douglas, in Ayrshire Collieries Corp. v. United States, supra, it is not within the competence of our limited function in this field to undertake to accommodate the factors of transportation conditions, distance and competition differently than the Commission has done in this case. The problems presented are essentially for the administrative rate-maker as long as no statutory requirement is overlooked.

We find that the Commission's findings are supported by the evidence, and they are adopted as the findings of this court.

We conclude that this court has jurisdiction of the parties and of the subject matter, and that the Commission acted within its statutory authority. Its findings are supported by the evidence and its judgment is affirmed.

ALFRED P. MURRAH,
Judge, U. S. Court of Appeals.
STEPHEN S. CHANDLER, JR.,
U. S. District Judge.

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VAUGHT, District Judge, dissenting:

I regret my inability to agree with my associates on the majority opinion.

The evidence upon which the Commission's findings are based, in my judgment, is incompetent, consisting of conclusions, and does not approach that "high standard of certainty," prescribed by the Supreme Court in North Carolina et al. v. United States et al., 325 U. S. 507; Houston & Texas Railway Company v. United States, 234 U. S. 342; Florida et al., v. United States et al., 282 U. S. 194.

The enforcement of the order should be enjoined.

EDGAR S. VAUGHT,
U. S. District Judge.

Endorsed: Filed January 26, 1949. Theodore M. Filson, Clerk.

APPENDIX "E"

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF OKLAHOMA

No. 4004 (Civil)

THE STATE OF TEXAS, et al., *Petitioners,*

vs.

THE UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION, *Respondents*

JOURNAL ENTRY

Be it remembered that this cause came on for consideration on the 16 day of July, 1948. Petitioners and respondents appeared by their attorneys of record, evidence was introduced, arguments heard, and the case was admitted upon briefs, which were subsequently filed.

Now on this the 26 day of January, 1949, it is ordered, judged and decreed that the case be and is hereby dismissed at the cost of the petitioners, and that judgment be entered for the respondents and each of them.

ALFRED P. MURRAH,
Judge, U. S. Court of Appeals.
STEPHEN S. CHANDLER, JR.,
U. S. District Judge.

Endorsed: Filed January 26, 1949. Theodore M. Filson, Clerk.

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